

SENATE BILL 2985
By Burks

AN ACT to amend Tennessee Code Annotated, Title 33; Title 67;
Title 68 and Title 71, relative to funding home and
community based services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the language in subsection (a) in its entirety and substituting instead the following new language:

Except as may otherwise be provided in this part, all net earnings shall be apportioned to this state by multiplying the earnings by a fraction, the numerator of which shall be the property factor plus the payroll factor plus the receipts factor and the denominator of such fraction shall be three (3).

SECTION 2. Tennessee Code Annotated, Section 67-4-2111, is amended by deleting the language in subsection (a) in its entirety and substituting instead the following new language:

Except as may otherwise be provided in this part, the net worth of a taxpayer doing business both within and without Tennessee shall be apportioned to this state by multiplying such values by a fraction, the numerator of which shall be the property factor plus the payroll factor plus the receipts factor and the denominator of such fraction shall be three (3).

SECTION 3. Tennessee Code Annotated, Section 67-4-2012(h), is amended by deleting the language in subdivision (2) in its entirety and substituting instead the following language:

The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(1) The purchaser is the United States government; or

(2) The taxpayer is not taxable in the state of the purchaser.

SECTION 4. Tennessee Code Annotated, Section 67-4-2111(h), is amended by deleting the language in subdivision (2) in its entirety and substituting instead the following language:

The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:

(1) The purchaser is the United States government; or

(2) The taxpayer is not taxable in the state of the purchaser.

SECTION 5. Tennessee Code Annotated, Section 67-4-2013, is amended by deleting subsection (b) in its entirety and relettering the remaining subsection accordingly.

SECTION 6. Tennessee Code Annotated, Section 67-4-2118, is amended by deleting the section in its entirety.

SECTION 7. Tennessee Code Annotated, Section 67-4-2012(i), is amended by deleting the words "or" at the end of subdivision (1); changing the period to a semicolon and adding the word "or" at the end of subdivision; (2); and by adding the following new subdivision:

(3) Notwithstanding any other provision of law to the contrary, gross receipts of a financial institution or unitary group of financial institutions shall be attributed to Tennessee as follows:

(A) Receipts from the lease or rental of real or tangible personal property shall be attributed to Tennessee if the property is located in Tennessee;

(B)

(i) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property shall be attributed to Tennessee if the security or sale property is located in Tennessee. If any part of the sale property or property standing as security for the payment of the debt is located part within and part without the state, only such proportion of the interest income or other receipts shall be attributed to Tennessee as the value of the property within the state bears to the whole property;

(ii) "Value" means only that value which the property would command at a fair and voluntary sale. Value shall be determined at the time the loan is made and shall not vary from year to year. In the event additional real or tangible personal property is pledged as security or otherwise covered under a loan or installment sales contract after the time the loan is made, the ratio based on the value of the property in the state compared to the whole property shall be adjusted;

(C) Interest income and other receipts from consumer loans not secured by real or tangible personal property shall be attributed to Tennessee if the loan is made to a resident of Tennessee, whether at a place of business, by a traveling loan officer, by mail, telephone or other electronic means;

(D) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property shall be attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are to be attributed to the state in which the business applied for the loan. As used in this subdivision, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first. For attribution purposes, "loan" does not include demand deposit clearing accounts, federal funds, certificates of deposit, and other similar wholesale banking instruments issued by other financial institutions;

(E) All receipts and fee income from the issuance of letters of credit, acceptance of drafts, and other devices for assuring or guaranteeing a loan or credit shall be attributed in the same manner as interest income and other receipts from the loan are attributed as set out in subdivisions (B), (C), or (D) above;

(F) Interest income, merchant discount, other receipts (including service charges from financial institution credit card and travel and entertainment credit

card receivables and credit card holders), and fees shall be attributed to the state to which the card charges and fees are regularly billed;

(G) Receipts from the sale of an asset, tangible or intangible, shall be attributed in the same manner that the income from the asset would be attributed under this subsection;

(H) Receipts from the performance of fiduciary and other services shall be attributed in accordance with subdivisions (1) or (2) above;

(I) Receipts from the issuance of traveler's checks, money orders or United States savings bonds shall be attributed to the state where such items are purchased;

(J) Receipts from a participating financial institution's portion of participation loans shall be attributed as otherwise provided under this subsection. A participation loan is any loan in which more than one (1) lender is a creditor to a common borrower; and

(K) All other receipts of a financial institution, if from other than sales of tangible personal property, shall be attributed to Tennessee in accordance with the provisions of subdivisions (1) or (2) above. If from the sale of tangible personal property, all other receipts of a financial institution shall be attributed to Tennessee in accordance with subsection (h) above.

SECTION 8. Tennessee Code Annotated, Section 67-4-2111(i), is amended by deleting the word "or" at the end of subdivision (1); by changing the period to a semicolon at the end of subdivision (2) and by adding the word "or" and by adding the following new subdivision:

(3) Notwithstanding any other provision of law to the contrary, gross receipts of a financial institution or unitary group of financial institutions shall be attributed to Tennessee as follows:

(A) Receipts from the lease or rental of real or tangible personal property shall be attributed to Tennessee if the property is located in Tennessee;

(B)

(i) Interest income and other receipts from assets in the nature of loans or installment sales contracts that are primarily secured by or deal with real or tangible personal property shall be attributed to Tennessee if the security or sale property is located in Tennessee. If any part of the sale property or property standing as security for the payment of the debt is located part within and part without the state, only such proportion of the interest income or other receipts shall be attributed to Tennessee as the value of the property within the state bears to the whole property;

(ii) "Value" means only that value which the property would command at a fair and voluntary sale. Value shall be determined at the time the loan is made and shall not vary from year to year. In the event additional real or tangible personal property is pledged as security or otherwise covered under a loan or installment sales contract after the time the loan is made, the ratio based on the value of the property in the state compared to the whole property shall be adjusted;

(C) Interest income and other receipts from consumer loans not secured by real or tangible personal property shall be attributed to Tennessee if the loan is made to a resident of Tennessee, whether at a place of business, by a traveling loan officer, by mail, telephone or other electronic means;

(D) Interest income and other receipts from commercial loans and installment obligations not secured by real or tangible personal property shall be attributed to Tennessee if the proceeds of the loan are to be applied in Tennessee. If it cannot be determined where the funds are to be applied, the receipts are to be attributed to the state in which the business applied for the loan. As used in this subdivision, "applied for" means initial inquiry (including customer assistance in preparing the loan application) or submission of a completed loan application, whichever occurs first. For attribution purposes, "loan" does not include demand deposit clearing accounts, federal funds,

certificates of deposit, and other similar wholesale banking instruments issued by other financial institutions;

(E) All receipts and fee income from the issuance of letters of credit, acceptance of drafts, and other devices for assuring or guaranteeing a loan or credit shall be attributed in the same manner as interest income and other receipts from the loan are attributed as set out in subdivision (B), (C), or (D) above;

(F) Interest income, merchant discount, other receipts (including service charges from financial institution credit card and travel and entertainment credit card receivables and credit card holders), and fees shall be attributed to the state to which the card charges and fees are regularly billed;

(G) Receipts from the sale of an asset, tangible or intangible, shall be attributed in the same manner that the income from the asset would be attributed under this subsection;

(H) Receipts from the performance of fiduciary and other services shall be attributed in accordance with subdivisions (1) or (2) above;

(I) Receipts from the issuance of traveler's checks, money orders or United States savings bonds shall be attributed to the state where such items are purchased;

(J) Receipts from a participating financial institution's portion of participation loans shall be attributed as otherwise provided under this subsection. A participation loan is any loan in which more than one (1) lender is a creditor to a common borrower; and

(K) All other receipts of a financial institution, if from other than sales of tangible personal property, shall be attributed to Tennessee in accordance with the provisions of subdivisions (1) or (2) above. If from the sale of tangible personal property, all other receipts of a financial institution shall be attributed to Tennessee in accordance with subsection (h) above.

SECTION 9. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following as a new section:

Section 67-4-2019. Notwithstanding any other provision of this chapter, all new revenues generated by the throwback rule amendments to the excise tax imposed by the provisions of this act shall be earmarked and allocated by the annual general appropriations act for home and community based-services for persons with disabilities who are on a waiting list for services from the division of mental retardation services. For the purposes of this section, "waiting list" means the list maintained by the division of mental retardation services of individuals seeking services under ICF/MR pursuant to 42 U.S.C. Section 1396(a) or a home and community based services waiver for the mentally retarded and developmentally disabled pursuant to 42 U.S.C. Section 1396(n).

SECTION 10. Tennessee Code Annotated, Title 67, Chapter 4, Part 21, is amended by adding the following as a new section:

Section 67-4-2021. Notwithstanding any other provision of this chapter, all new revenues generated by the throwback rule amendments to the franchise tax imposed by the provisions of this act shall be earmarked and allocated by the annual general appropriations act for home and community based-services for persons with disabilities who are on a waiting list for services from the division of mental retardation services. For the purposes of this section, "waiting list" means the list maintained by the division of mental retardation services of individuals seeking services under ICF/MR pursuant to 42 U.S.C. Section 1396(a) or a home and community based services waiver for the mentally retarded and developmentally disabled pursuant to 42 U.S.C. Section 1396(n).

SECTION 11. This act shall take effect July 1, 2004, the public welfare requiring it.